

ESTTA Tracking number: **ESTTA405368**

Filing date: **04/25/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91190794
Party	Plaintiff Unilever Supply Chain, Inc.
Correspondence Address	KRISTIN H. ALTOFF MORGAN, LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVE. NW WASHINGTON, DC 20004 UNITED STATES trademarks@morganlewis.com, apolott@morganlewis.com, kaltoff@morganlewis.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Anita B. Polott
Filer's e-mail	trademarks@morganlewis.com, apolott@morganlewis.com, kaltoff@morganlewis.com, fgordon@morganlewis.com
Signature	/Anita B. Polott/
Date	04/25/2011
Attachments	Motion to Dismiss Applicant's Counterclaim.pdf (9 pages)(409902 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

UNILEVER SUPPLY CHAIN, INC.,

Opposer / Counterclaim Respondent,

v.

ENVIRODINE STUDIOS INC.,

Applicant / Counterclaim Petitioner.

In re Application Serial No. 77/546,243
Mark: SCENTSICLES
Published: December 30, 2008
Opposition No. 91190794

MOTION TO DISMISS APPLICANT'S COUNTERCLAIM

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and TBMP § 503, Opposer / Counterclaim Respondent Unilever Supply Chain, Inc. ("Unilever") hereby moves to dismiss the counterclaim filed in this proceeding by Defendant / Counterclaim Petitioner Envirodine Studios Inc. ("Envirodine") as moot.

On February 4, 2010, Envirodine filed an Amended Answer to Notice of Opposition and Counterclaim. Envirodine's counterclaim sought cancellation of Opposer's registrations SUPERSICLE (Registration No. 1,126,015) and SUPERSICLE and Design (Registration No. 2,314,773) (the "Counterclaim"). Subsequent to Envirodine filing the Amended Answer and Counterclaim, the parties entered into further settlement negotiations, continuing to extend all relevant deadlines, including the deadline for Unilever to answer the Counterclaim, to allow for further settlement discussion.

The parties' attempts to resolve this matter amicably remain ongoing, but in the meantime, Unilever allowed the above-referenced registrations for the SUPERSICLE and SUPERSICLE and Design marks to expire when it did not file Section 8 Declarations of Use and Section 9 requests for renewal for the registrations. Registration No. 1,126,015 expired on May

22, 2010, and Registration No. 2,314,773 expired on September 3, 2010. (Attached as Exhibit A are TARR printouts verifying that the SUPERSICLE registrations at issue have expired.)

Accordingly, in lieu of filing an answer, Unilever hereby moves to dismiss Envirodine's counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6). Envirodine has failed to state a claim upon which relief can be granted in that it is seeking to cancellation of Registration registrations that have already been cancelled. Envirodine's Counterclaim is therefore moot.

For the reasons above, Unilever respectfully requests that the Board dismiss Envirodine's Counterclaim. Pursuant to TBMP § 510.03, Unilever also respectfully requests that, pending disposition of the Motion, the Board suspend the proceeding with respect to all matters not germane to the Motion.

Dated: April 25, 2011

Respectfully submitted,

By: /s/ Anita B. Polott
Anita B. Polott
Kristin H. Altoff
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Tel: (202) 739-3000
Fax: (202) 739-3001

Attorneys for Opposer / Counterclaim
Respondent
UNILEVER SUPPLY CHAIN, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss Applicant's Counterclaim has been served mail this 25th day of April 2011 to:

Mary An Merchant
Ballard Spahr LLP
999 Peachtree Street, NE
Atlanta, GA 30309
UNITED STATES
MerchantM@ballardspahr.com, JacobsH@ballardspahr.com

/s/ Anita B. Polott

Anita B. Polott

Exhibit A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-04-25 10:57:29 ET

Serial Number: 73191547 Assignment Information Trademark Document Retrieval

Registration Number: 1126015

Mark (words only): SUPERSICLE

Standard Character claim: No

Current Status: This registration was not renewed and therefore has expired.

Date of Status: 2010-05-22

Filing Date: 1978-10-30

Transformed into a National Application: No

Registration Date: 1979-10-16

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2008-01-28

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. UNILEVER SUPPLY CHAIN, INC.

Address:

UNILEVER SUPPLY CHAIN, INC.
1 JOHN STREET
CLINTON, CT 06413
United States

Legal Entity Type: DELAWARE

State or Country Where Organized: (NOT AVAILABLE)

GOODS AND/OR SERVICES

International Class: 030

Class Status: Expired

FROZEN CONFECTIONS AND CONCENTRATES FOR MAKING THE SAME

Basis: 1(a)

First Use Date: 1978-10-11

First Use in Commerce Date: 1978-10-11

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-05-22 - Canceled Section 8 (10-year)/Expired Section 9

2010-03-09 - Review Of Correspondence Complete

2010-02-04 - FAX RECEIVED

2008-01-28 - Case File In TICRS

2006-10-07 - Review Of Correspondence Complete

2005-10-27 - PAPER RECEIVED

1999-08-23 - First renewal 10 year

1999-06-17 - Section 9 filed/check record for Section 8

1985-04-09 - Section 8 (6-year) accepted & Section 15 acknowledged

1984-11-29 - Section 8 (6-year) and Section 15 Filed

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

KENNETH C LEONARD

PETER MENDELSON AND ERIC MCCOMIC

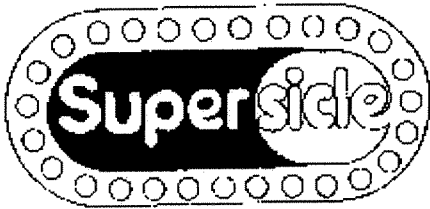
33 BENEDICT PL

GREENWICH CT 06830-6000

This page was generated by the TARR system on 2011-04-25 10:57:14 ET

Registration Number: 2314773

Mark



(words only): SUPERSICLE

Standard Character claim: No

Current Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2010-09-03

Filing Date: 1999-04-12

Transformed into a National Application: No

Registration Date: 2000-02-01

Register: Principal

Law Office Assigned: LAW OFFICE 111

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2010-03-09

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. UNILEVER SUPPLY CHAIN, INC.

Address:

UNILEVER SUPPLY CHAIN, INC.

1 JOHN STREET

CLINTON, CT 06413

United States

Legal Entity Type: DELAWARE

State or Country Where Organized: (NOT AVAILABLE)

GOODS AND/OR SERVICES

International Class: 030

Class Status: Section 8 - Cancelled

Frozen confections

Basis: 1(a)

First Use Date: 1997-07-11

First Use in Commerce Date: 1997-07-11

ADDITIONAL INFORMATION

Design Search Code(s):

26.01.02 - Circles, plain single line; Plain single line circles

26.01.31 - Circles - five or more; Five or more circles

26.03.01 - Ovals as carriers and single line borders

Prior Registration Number(s):

1126015

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-09-03 - Canceled Section 8 (10-year)/Expired Section 9

2010-03-09 - Review Of Correspondence Complete

2010-02-04 - PAPER RECEIVED

2009-10-22 - Case File In TICRS

2006-06-24 - Section 8 (6-year) accepted & Section 15 acknowledged

2006-02-01 - Section 8 (6-year) and Section 15 Filed

2006-02-01 - Section 8 (6-year) and Section 15 Filed

2006-02-01 - PAPER RECEIVED

2005-10-27 - PAPER RECEIVED

2000-02-01 - Registered - Principal Register

1999-11-09 - Published for opposition

1999-10-08 - Notice of publication

1999-07-07 - Approved for Pub - Principal Register (Initial exam)

1999-07-07 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

ERIC W. MCCORMICK

Correspondent

ERIC W. MCCORMICK

UNILEVER

700 SYLVAN AVE.

ENGLEWOOD CLIFFS, NJ 07632
